No. 4 Orig.
Motion Papers for Plaintiff.
Filed March 30, 1893.

Supreme Court of the United States.

OCTOBER TERM, A. D. 1892.

No. 5. Original.

THE STATE OF IOWA

vs.

THE STATE OF ILLINOIS.

MOTION.

Now comes the said plaintiff, The State of Iowa, and moves the Court for an order confirming the report of the commissioners appointed by this Court to determine and mark the boundary line between said States at the nine bridges across the Mississippi river between said States so far as it relates to the boundary at the Keokuk and Hamilton bridge, at Keokuk, Iowa, upon which report has been made. Said motion is founded upon said report and the record in this case.

(Signed) J. H. COLE,
" WALTER I. HAYES,
Attorneys for Plaintiff.

Endorsed: Supreme Court U. S., October term, 1892. No. 5. Original. The State of Iowa, complainant, *vs.* The State of Illinois. Motion for confirmation of commissioners' report as to boundary line at Keokuk and Hamilton bridge. Filed March 30, 1893.

KEOKUK, IOWA, *March* 23, 1892.

To the Honorable the Supreme Court of the United States.

GENTLEMEN: Your commissioners appointed under a decision of your honorable body in the case of The State of Iowa *vs.* The State of Illinois, rendered January 3, 1893, to determine and mark the boundary line between the States of Iowa and Illinois at the nine bridges across the Mississippi river between these States have the honor to respectfully submit the following report, viz:

After qualifying under oath, as by law provided, and after most careful consideration of the decision of your honorable body in the case above mentioned, your commissioners proceeded, as directed by you, to survey and fix the boundary line between Iowa and Illinois on the Keokuk and Hamilton bridge, at Keokuk, Iowa.

Your commissioners find that the said boundary line is situated (1,041.65) ten hundred and forty-one and sixty-five one-hundredths feet easterly of the center of the draw-span, measured along the axis of the bridge and crossing the structure in a direction parallel to the piers of the bridge.

Your commissioners also respectfully submit the accompanying plat, showing their measurements along the bridge and to neighboring monuments, as a matter of further record.

(Signed) MONTGOMERY MEIGS,
JOHN R. CARPENTER,
ALBERT WEMPNER,
Commissioners.

Endorsed: Supreme Court U. S., October term, 1892. No. 5. Original. The State of Iowa, complainant, *vs.* The State of Illinois. Report of commissioners as to boundary line at Keokuk and Hamilton bridge and plat accompanying same. Filed March 30, 1893.

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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, A. D. 1905.

No. 2, Original.

STATE OF IOWA

v.

STATE OF ILLINOIS.

STIPULATION AS TO FINAL DECREE.

And now comes the State of Iowa, complainant in this cause, and also comes the State of Illinois, defendant in this cause, and severally and jointly move the court to vacate and set aside so much of the interlocutory order entered in this cause on the third day of January, A. D. 1893, as orders "that a commission be appointed to ascertain and designate at said places the boundary line between the two States, said commission consisting of three competent persons to be named by the court, upon suggestion of counsel, and be required to make a proper examination and to delineate on maps prepared for that purpose the true line as determined

by this court, and report the same to the court for its further action;" and also the interlocutory order entered in this cause on the seventh day of March, A. D. 1893; and also that part of the interlocutory order entered in this cause on the tenth day of April, A. D. 1893, which was not set aside and vacated by the interlocutory order entered in this cause on the fifteenth day of January, A. D. 1894; and that that part of the interlocutory order entered in this cause on the third day of January, A. D. 1893, whereby it was "ordered, adjudged, and decreed by this court that the boundary line between the State of Iowa and the State of Illinois is the middle of the main navigable channel of the Mississippi river at the places where the nine bridges mentioned in the pleadings cross said river," be declared the final order, judgment, and decree of this court in this cause.

CHAS. W. MULLAN,
Attorney General of Iowa.
W. H. STEAD,
Attorney General of Illinois.

[Endorsed:] In the Supreme Court of United States. Gen. No. —; docket —; term No. —; page —. State of Iowa *vs.* State of Illinois. Stipulation as to final decree. W. H. Stead, attorney general of Illinois; C. W. Mullan, attorney general of Iowa.

No. 11 Orig.

Brief of Stone & Davis for Compl'

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Filed Oct. 10, 1892.

SUPREME COURT

OF THE UNITED STATES.

OCTOBER TERM, 1891.

Original No. 11.

SET FOR HEARING OCTOBER TERM, 1892.

THE STATE OF IOWA, *Complainant,*

v.

THE STATE OF ILLINOIS, *Defendant.*

EQUITY.

On Bill, Answer and Replication, and Cross-Bill and Answer.

POINTS, BRIEF AND ARGUMENT FOR COMPLAINANT.

JOHN Y. STONE,
Counsel for Comp't and Attorney Gen. of Iowa.

JAMES C. DAVIS,
of Counsel.

REPUBLICAN STEAM PRINT, Carthage.

Supreme Court of the United States.

OCTOBER TERM, 1891.

Original No. 11.

SET FOR HEARING OCTOBER TERM, 1892.

THE STATE OF IOWA, *Complainant,*

v.

THE STATE OF ILLINOIS, *Defendant.*

EQUITY.

On Bill, Answer and Replication, and Cross-Bill and Answer.

POINTS, BRIEF AND ARGUMENT FOR COMPLAINANT.

JOHN Y. STONE,
Counsel for Comp't and Attorney Gen. of Iowa.

JAMES C. DAVIS,
of Counsel.

THE contest in this case is over the points or parts of the Mississippi River, over which the respective states, Iowa and Illinois, have jurisdiction for the purposes of taxation, as well as for all other purposes; hence involves the boundary lines in said river between said states.

On the part of Complainant it is contended that for purposes of taxation as well as for all other purposes, the boundary line is at the *middle of the main body of the river*, taking the middle line between the shores upon each side, without regard to the steamboat channel, or lowest and deepest part of the stream, and to determine the shores or water lines on each side, the measurements must be taken when the water is in its natural or ordinary stage, at a medium highth, not swollen by floods nor shrunk by drouth.

Angel on Watercourses, Secs. 10 and 101a.
Dunlieth & Dubuque Bridge Co. v. The County of Dubuque, 55 Iowa, 528.

The act of Congress of April 18th 1818, known as the Enabling Act, and defining the western boundary of Illinois; also the Constitution of Illinois, 1818, 1848 and 1870, all defining the western boundary of Illinois, as *down along the middle of that (the Mississippi) river to its confluence with the Ohio.*

On the part of the defendant it is claimed that the state of Illinois has jurisdiction for the purpose of taxation, and all other purposes, to the middle of the *steamboat channel* of said river regardless of where *that channel* may be, whether on the east or west bank of the river. *Bertschi v. The Keokuk & Hamilton Bridge Co. in the Appellate Court, 3d Dist. of Ill., and dictum of*

Judge Scott *in Buttenuth v. St. Louis Bridge Co., 123 Ill., 546, 548.*

It is a well known fact, that the *steamboat channel* (or channel of commerce, as the local authorities in Illinois sometimes designate it,) is more often close under one bank of the river, first one side and then the other, than at or near the middle of the main *arm* or *thread* of the stream.

For instance, at the location of the Dunlieth & Dubuque Bridge, though the main *arm* or *thread* of the stream is about 1800 ft. wide, the *steamboat channel* is immediately at the Illinois Shore, the center of such channel being only about 400 feet west of the shore; while at the location of the Keokuk & Hamilton Bridge, the reverse is the fact, the *steamboat channel* is immediately at the Iowa shore, the middle of such channel being only about 300 feet from that shore, while the main *arm* or *thread* of the river, always a solid body of water, except as it is obstructed by approaches to said bridge, is near 3,000 feet in width.

Practically, in taxing the Keokuk & Hamilton Bridge, the authorities in Iowa tax to the middle of the river, and the authorities in Illinois tax to the draw in said bridge, which, it is asserted by the Illinois officers, is the middle of the *steamboat channel*, and the line between said states. The effect of which is to tax over 900 feet of said bridge both in Iowa and Illinois.

It is clearly the right of the state of Iowa, to tax all property within the state, and is as clearly the duty of the state to so cause its boundaries to be marked and designated, that there can be no dispute between it and Illinois, as to jurisdiction, whereby its citizens are subjected to taxation in both states on the same property.

The pleadings in this cause present fully to the court the facts; hence no evidence is required.

On the part of Iowa the claim is that the line between said states, is the *middle of the main body or arm of said river*, and that its jurisdiction for all purposes extends to that line.

On the part of Illinois the claim is, that the line between said states, is the *middle of the steamboat channel*, and that its jurisdiction for all purposes extends to that line, regardless of where, in the main body or arm of said river may it be, or whether such steamboat channel is east or west of the middle of the main arm or body of the river.

This Court, only, can authoritatively determine that dispute, and it must do so, not upon evidence, but, upon the intention of congress in the passage of said enabling act of April 18th 1818, and what the people of Illinois understood it to mean when the Constitution of Illinois, of 1818 was adopted.

To the complainant it seems there ought to be no dispute but that the *middle of the main body or arm*

of the river was intended and understood as the west boundary of Illinois.

In support of the position of Complainant, reference is made to the following authorities:

Angel, in his work on Watercourses, Sec. 10, speaking of riparian rights, says:—"The soil of the bed itself and consequently the water, may be and most often is divided between opposite riparian owners; that is, the land on one side may be owned by one person and the land on the other side by another. When such is the case each proprietor owns to the middle, or what is called the *thread* of the river." In note 2—"In ascertaining the thread of the river, it will be proper to take the middle line between the shores upon each side, *without regard to the channel* or lowest and deepest part of the stream. And in ascertaining the shores or water lines on each side, to measure, it will be proper to find what those lines are when the water is in its *natural and ordinary stage*, at a medium height, neither swollen by freshets nor shrunk by drought." *Trustees v. Dickinson, 9 Cushing, 544, 552.*

Again, at Sec. 95, Angel says, using the language of Mr. Justice Story—"PRIMAFACIE, every proprietor on each bank of a river is entitled to the land covered with water, to the *middle thread of the stream.*"

WHAT IS THE MIDDLE OF A RIVER?

Anderson's Dictionary of Law, says:

MIDDLE.—See Thread.

THREAD.—The middle line of a stream or highway. See Filum, Riparian, Street.

FILUM.—A thread; a line,—the middle line of a stream or road. The imaginary line drawn through a stream or highway at which the titles of the opposite owners presumably meet.

FILUM AQUA.—The line of the water; water line.

MEDIUM FILUM AQUA.—The middle line of the water.

MEDIUM FILUM VIÆ.—The middle of the road.

Again, at Sec. 101 *a*, Angel says—"It is apparant that the rights of riparian proprietors on opposite banks of the stream do not depend upon and are not affected by the locality of the channel through or along which the larger or even the chief and principal part of water flows. Wherever this current may be, *the center line of the bed of the stream*, parallel to and equally distant from each shore, is the boundary of their lands."

The principles thus stated have been repeatedly held to be the rule of property in Illinois.

Middleton v. Prichard, 3 Scam. 510.
Braxon v. Bressler, 64 Ill., 490.
Canal Trustees v. Haven 5 Gilm, 557, 558.
The Chicago & Pacific R. R. Co. v. Stien 75 Ill., 44

Houch v. Yates, 82 Ill., 181.
Cobb v. Lavalle, 89 Ill., 334.
Washington Ice Co. v. Shortall, 101 Ill., 52.
Village of Brooklyn v. Smith, 104 Ill., 438, 439.
Piper v. Connelly, 108 Ill., 651.
McCartney v. C. & E. R. R. Co. 112 Ill., 634.
Buttenuth v. St. Louis Bridge Co., 123 Ill., 546, 549, 550, 551, 2, 3.
St. Louis Bridge Co. v. East St. Louis et al., 121, Ill., 238, 245.

This last was a bill filed in the St. Clair Circuit Court, to enjoin the collection of a *city tax*, against that part of the *St. Louis Bridge*, situated East of the centre of the middle span of the bridge, that being the middle of the *river*—and West of the West line of Front St. in East St. Louis.

Shope J. at p. 245, says, "The Mississippi is a navigable stream in fact, though not so at common law, and the jurisdiction of the State of Illinois, for all purposes not delegated to the general government, extends over the territory and waters of said river, TO THE MIDDLE THEREOF; and when property is found situated within such limits, or crimes and offences are committed within the legal boundaries of the State, whether such territory is covered with water or is dry land, the general laws of the State must be given effect."

In Morgan & Harrison v. Reading, 3 Sm. & Marshall, 366, a suit for rent or use and occupation, by riparian,

owner, against boatmen using the bank 119 days, Ch. J. Sharkey, p. 397, says *France* "was the first owner, by appropriation, of the Mississippi and all the territory of its tributaries. By treaty in 1763 * * France ceded to Great Britain all her territory east of the Mississippi river and north of the river Iberville, and the two powers fixed the boundary between them, by a line drawn along the middle of the river Mississippi." * * Great Britian continued to be the owner until Nov. 30th, 1782, when it ceeded to the U, S. all bounded on the west, north of 31 deg. north latitude, "*by a line drawn along the middle of the Mississippi River.*" Confirmed by treaty of 3d Sept. 1783. At p. 398: "Thus the U. S. succeeded to all the territory east of a line drawn along the middle of the Mississippi River.

In 1817 *Mississippi* was admitted with its west "*boundary* up the *Mississippi* River." * * "Congress adopted the more general mode of defining boundary on water courses, and omitted to designate the middle of the river as the limit, but as we shall endeavor to show, did not thereby change the original boundary."

At p. 399. "Thus we find the common law was adopted for the government of Mississippi." * * "*The middle of the river* being the dividing line, it follows that all grants, public as well as private * * must be construed by the rules of the common law." * * "The Mississippi territories by this rule extends to the *middle of the river.*" The rights of riparian owners extend to the MIDDLE OF THE RIVER.

In Dunlieth & Dubuque Bridge Co. v. The County of Dubuque, 55 Iowa, 558. This was an appeal from an assessment for taxes. P. 559. The bridge was 1,760 feet long, between abutments. From the Illinois shore to the middle of the *pivot-pier* is 430 ft. The pivot-pier is in the middle of the main channel followed by vessels in navigation of the river. The main body of water of the river (p. 570) flows in the channel between the abutments of the main bridge and is equal thereto in breadth.

6th. The Court finds the "eastern boundary of Iowa "is at the center of said main bridge, being the middle "of the main stream or channel of the Mississippi "river running thereunder, and distant 880 feet respect-"ively from the Iowa and Illinois shores or banks."

Court: The middle of the bed of the stream, regardless of the deepest channel, is the line between riparian owners, whether individuals or states.

Pratt v. Lawson et al., 2 Allen, 275, **284-5.**

Angel on Water Courses, § 10 and note 2, § 11 and note 3.

Jones v. Soulard, 24 Howard, *64-5*. The question was one of *accretions* in front of *St. Louis*, in Mississippi River. The charter of *St. L.* is "*thence by the Mississippi River to the place of begining.*"

This expression confers riparian rights, *to the middle thread of the stream.* The court say, 1st: "We are of "the opinion that the charter of St. Louis of 1809, ex-

"tends to the eastern boundary of the state of Missouri, "IN THE MIDDLE OF THE RIVER MISSISSIPPI."

The Sup. Court of Ill., in Buttenuth v. St. Louis Bridge Co., *supra*, at page 550 say: No reason is perceived why the principles here stated should not control the decision of the case being considered. As before remarked, it is manifest it was the intention of Congress, the Mississippi River should constitute a common boundry between the States of Illinois and Missouri, and had the words the "middle of the Mississippi River" and the "middle of the main channel" been omitted in both enabling acts of Congress, still the river itself would be the boundary and *each State would hold to the* MIDDLE OF THE STREAM."

The river at St. Louis bridge is like the river at the Keokuk & Hamilton bridge,—one open, unbroken sheet of water from the Missouri shore at St. Louis to the Illinois shore on Bloody Island,—and from the Iowa shore at Keokuk to the Illinois shore on Island No. 4. The distance at St. Louis being about 1500 feet and at Keokuk about 3000 feet.

Illinois authorities insist the middle of the river is at the middle of the channel ordinarily used by steamboats, less than 600 feet from the Iowa shore and over 2400 feet from the Illinois shore, (of that open sheet of water composing the main body or channel of the river) on Island No. 4. and about 900 feet west of the middle of the river.

Iowa is a prohibition state. Suppose the authorities at Hamilton grant a license to keep a dram shop immediately east of the east end of the draw and within 600 feet of the Iowa shore, what would be the result should the Iowa authorities demolish the dram shop? Could they be indicted and punished in Illinois?

If Illinois has the right to tax to the east end of the draw, the bridge to that point is in the City of Hamilton, and its authorities may lawfully license the dram shop, and if demolished under order of a court in Iowa, the sheriff or marshal obeying the order of the Iowa court could and should be indicted and punished in Illinois.

To my mind the simple question is, what did congress intend by the enabling act of 1818, and what did the people of Illinois understand was intended when adopting the constitutions of 1818, 1848 and 1870. Did they mean what they said *that the middle of the Mississippi River* was the western boundary of Illinois?

Prior to 1818, both Illinois, Iowa and Missouri were territory of the United States over which congress had supreme control.

Prior to that time, on May 18, 1796, and again May 3d, 1811, congress declared all navigable rivers within its territory public highways for the use of all the people, and they so remain. See 2476 and 5251 U. S. R. S. Neither Missouri, Iowa or Illinois have any right to interfere with the free navigation thereof as such highway. The use of the whole river from bank to bank is free as

a public highway to all the people of all the states. Not to the people of Illinois or Iowa alone, but to all. No question of right to use the stream and every part thereof as a highway could possibly arise between the states. Neither could authorize the construction of a bridge or other work that would interfere in the least with the use of the river as a highway without consent of congress. While that is true, the right to the soil under the water to the *middle of the river*, belongs in either state to the state or the riparian owner. And the right to tax any structure, placed in the river by proper authority, *to the middle of the river*, belongs to the *riparian state*.

The Supreme Court of the State of Iowa, by its solemn adjudication of the question properly before it, in the case of the Dunlieth & Dubuque Bridge Co. v. The County of Dubuque (supra) has given its construction as to the right of taxation. It holds that it has a right to tax to the *middle of the river*. And conceeds to Illinois the same right. In that case the steamboat channel was on the Illinois shore, and the authorities of Dubuque Co. had assumed to tax to the center of the steamboat channel, about ¾ the distance across the open bed of the river. The Supreme Court say that won't do. That the line between the states is the *middle of the river*. Since that decision Iowa has taxed the several bridges across the river to the middle of the river. This is the only case where the question was properly and squarely before the court, and directly passed upon, until the case of Bertschi v. the Keokuk & Hamilton Bridge Co., before cited as decided by the Appellate

Court, 3d Dist. Ill., in which that court holds the middle of the *steamboat channel* is the line between the states

The case in Iowa as a case in point and expressing the opinion of the State of Iowa on the question in this case, is entitled to great weight, notwithstanding gentlemen say the Supreme Court in the *Buttenuth* case did not approve it. The Supreme Court in the Buttenuth case was not called upon to either approve or disapprove. The question of our right to tax beyond the middle of the river was not before the court—was not in the case. What the court did decide was that Illinois had the right to tax to the *middle of the river*. Nothing more. Exactly what the Iowa court decided. And the Iowa court went further and distinctly say they cannot tax beyond the middle of the river.

11 Sub. C. R. *344-5-6*,

City of St. Louis v. Rutz, p. 344. Blatchford J says: "The law as stated by law writers, and in the adjudged cases *seem to be*, that when a river is declared to be the boundary between states, although it may change imperceptibly from natural causes, *the river, as it runs, continues to be the boundary*. But if the river should suddenly change its course, or desert the original channel, the rule of law is, THE BOUNDARY REMAINS IN THE MIDDLE OF THE DESERTED RIVER BED."

Missouri v. Kentucky, 11 Wallace, 395, the opinion of Davis, J., seems to put the whole subject at rest.

This was a case between STATES. The court say, p. 401. "It is unnecessary for the purposes of this suit, to consider whether, on general principles, the middle of the channel of a navigable river which divides coterminous states, is or not the true boundary between them, in the absence of express agreement to the contrary, *because the treaty between France, Spain and England in February, 1763, stipulated* THAT THE MIDDLE OF THE RIVER MISSISSIPPI should be the boundary between the British and the French territories on the continent of North America. And this line established by the only sovereign powers at the time interested in the subject, has remained ever since as they settled it."

It seems to us there can be but one ruling in this case, that is, that the line between the States of Iowa and Illinois, is the middle of the main body or arm of the Mississippi River, taken at its medium, not swollen by floods or shrunk by drought And at the point of the Keokuk and Hamilton bridge, is in the middle of the main body or arm of the river as it flows, and ever did flow, between the Iowa shore on the west and the west bank of Island No. 4. in Illinois, and at a distance of about 1521 feet from either. And at the Dunlieth & Dubuque bridge is where the Supreme Court of Iowa held it to be, in 55th Iowa.

If we are correct, the court will so determine and ap-

point a commission to establish and mark the state line at each of said nine bridges, admitted to exist.

Respectfully,

JOHN Y. STONE,

Attorney General of Iowa.

JAMES C. DAVIS,

Keokuk, Iowa, of Counsel.